ME COURT, U. S.

In the Supreme Court of the United States

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OCTOBER TERM, 1967

No. 846

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA and PETER E. MITCHELL, WILLIAM M. BENNETT, A. W. GATOV, WILLIAM SYMONS, JR. and FRED P. MORRISSEY, as Members thereof,

Appellants,

vs.

BALTIMORE SHIPPERS AND RECEIVERS ASSOCIATION, INC., THE CHARTER OAK SHIPPERS COOPERATIVE ASSOCIATION, INC., INDUSTRIAL SHIPPERS ASSOCIATION, INC., UNITED SHIPPERS ASSOCIATION, INC., CHARLES J. WORTH DRAYAGE COMPANY, LOS ANGELES WHOLESALE INSTITUTE, G. I. TRUCKING COMPANY, REDWAY TRUCK AND WAREHOUSE COMPANY,

Appellees.

On Appeal from the United States District Court for the Northern District of California

Brief Opposing Motion to Affirm

MARY MORAN PAJALICH
BERNARD A. PEETERS
JANICE E. KERR
5072 State Building
San Francisco, California 94102

Attorneys for Appellants Public Utilities Commission of the State of California and its Members

SORG PRINTING COMPANY OF CALIFORNIA, 346 FIRST STREET, SAN FRANCISCO 94105

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This brief is filed in opposition to appellees' Motion to Affirm pursuant to Rule 16, paragraph 4 of the Rules of the Supreme Court of the United States.

Appellees have not squarely met the basic issue involved in this case, that is, whether the states have the power to regulate interstate transporation which has been specifically exempted from federal regulation. Again, it cannot be emphasized too strongly that Congress in enacting 49 U.S.C. 303(b)(8) intended to leave regulation of commercial zone transportation to the States. The statement of Senator Wheeler, who introduced the bill containing Section 303(b)(8) can lead to no other conclusion. Senator Wheeler stated:

> "Furthermore, an exemption is made *unless the Interstate Commerce Commission finds that the law cannot be made to work without its inclusion to some extent, of the transportation of property, locally* or between contiguous municipalities or commercial zones, as between New York and New Jersey, and also, for instance, as between Washington and Alexandria, and other contiguous cities *where the transportation is regulated by the local governments themselves.*" 79 Cong. Rec. Part 5, p. 5650 (Emphasis added).

Appellees contend that commercial zone transportation was intended to be regulated only, if at all, by the Interstate Commerce Commission. The above quote dispels any such intention.

Secondly, appellees must be contending that *State Corporation v. Bartlett,* 338 F.2d 495, cert. den. 380 U.S. 964 (1964) stands for the proposition that any state regulation, in any circumstances whatsover, of interstate transportation rates has *per se* "commercial aims" and it is thus prohibited. This court has never made any such statement. Just what the term "commercial aims" means or how it should apply in an area which Congress has specifically left to state regulation is not explained.

In the circumstances, the *Bartlett* case should not be controlling here because of the obvious differences between the purposes of the agricultural exemption in 49 U.S.C. 303(b)(6) and the commercial zone exemption in 49 U.S.C. 303(b)(8), and their respective legislative histories.

The Court should not allow such arguments to persuade it to dispose of this appeal without plenary consideration. That the issues are of national importance is obviously conceded by the appellees.

Respectfully submitted,

MARY MORAN PAJALICH
BERNARD A. PEETERS
JANICE E. KERR

Attorneys for Appellants
Public Utilities Commission
of the State of California
and its Members